STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 31, 2006
v	No. 263274 Oakland Circuit Court
MARK STEWART, Defendant-Appellant.	LC No. 04-199956-FC

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

A jury convicted defendant of aggravated stalking, MCL 750.411i, and the trial court sentenced him as a fourth habitual offender, MCL 769.12, to 2 to 20 years in prison. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues there was insufficient evidence to convict him of aggravated stalking. When this Court considers a claim of insufficient evidence, we review the evidence de novo, in the light most favorable to the prosecutor, to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

"Aggravated stalking consists of the crime of 'stalking,' MCL 750.411h(1)(d), and the presence of an aggravating circumstance specified in MCL 750.411i(2)." *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002). Pursuant to MCL 750.411h(1)(d), " '[s]talking' means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested." Aggravated stalking occurs when at least one of the stalking incidents is in violation of a restraining order and the defendant has actual notice of the restraining order. MCL 750.411i(2)(a); *People v White*, 212 Mich App 298, 306-308; 536 NW2d 876 (1995); *People v Kieronski*, 214 Mich App 222, 233-234; 542 NW2d 339 (1995).

Defendant maintains that the victim could not have felt terrorized, frightened, intimidated, or threatened because she interacted with defendant even after defendant threatened her and she did not immediately seek a personal protection order (PPO). Defendant also argues that, absent his conviction of related armed robbery and malicious destruction of property

offenses, the only evidence of stalking were telephone calls he made to the victim before he knew about the PPO.

We hold that it is irrelevant that the victim paid for a motel room for defendant for two days, that she waited a month after defendant's first threat before she applied for a PPO, or that she spoke to him on the telephone after she was granted a PPO. A defendant may be found guilty of stalking even if a victim continues her interaction with the threatening defendant or fails to immediately apply for a PPO. *White, supra* at 301-303. Evidence established that defendant threatened the victim numerous times. The victim testified that defendant scared her, that she was unable to sleep for two weeks, and that she sought counseling for battered women. Therefore, sufficient evidence established that the victim felt terrorized, frightened, and threatened.

Defendant further claims that he cannot be guilty of aggravated stalking because no stalking activity took place after a PPO was issued. Defendant incorrectly asserts that, because he was not convicted of armed robbery and malicious destruction of property that occurred on August 12, 2004, he also could not be found to have engaged in stalking activity on August 12, 2004. Defendant was personally served with a PPO on August 1, 2004. Testimony established that, on August 12, 2004, defendant twice approached the victim in a public place and tried to hit her with a stick. Merely appearing within site of a victim is enough to find an occurrence of a stalking violation, MCL 750.411i(1)(f)(i), and, therefore, the jury was clearly correct when it convicted defendant of aggravated stalking.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette